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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Preemption of State and Local Zoning and)
Land Use Restrictions on the Siting,) MM Docket No. 97-182
Placement and Construction of Broadcast)
Station Transmission Facilities)

REPLY COMMENTS

The Wireless Cable Association International, Inc. ("WCA"), by its attorneys, hereby submits its comments with respect to the Commission's *Notice of Proposed Rulemaking* ("NPRM") in the above-captioned proceeding.^{1/}

In their initial comments on the *NPRM*, various members of the television broadcasting industry have argued persuasively that a clear and unambiguous federal preemption rule is necessary to overcome local zoning and land use ordinances that unnecessarily delay or obstruct timely construction of digital television ("DTV") transmission towers.^{2/} WCA believes that the concerns raised by the broadcasters are equally relevant to wireless cable operators who are converting their facilities to accommodate digital transmission. Wireless cable utilizes microwave channels in the 2.1 and 2.5 GHz bands allocated to the Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") to transmit cable programming networks, local broadcast signals, educational programming, high-speed Internet and other services over-the-air to small antennas

^{1/} FCC 97-296 (rel. Aug. 19, 1997).

^{2/} See, e.g., Comments of the National Association of Broadcasters, MM Docket No. 97-182, at 7-10 (filed Oct. 30, 1997); Comments of ABC, Inc., MM Docket No. 97-182, at 2-4 (filed Oct. 30, 1997).

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mounted on subscribers' rooftops. The wireless cable industry today serves over one million subscribers, and the recent launch of digital wireless cable operations is expected to rapidly increase that number.^{3/} The industry's transition to digital has already cost millions of dollars and ultimately will require an industry-wide investment of hundreds of millions of dollars.^{4/} As the Commission is aware, "the nature of digital transmission will allow [licensees] more flexibility to tailor signal coverage to geographic boundaries using multiple transmitting facilities."^{5/} Simply stated, wireless cable operators cannot afford to suffer any delays in implementing multiple site transmission configuration that result from overbroad state and local zoning and land use ordinances that preclude competition.

WCA thus supports the adoption of the proposed preemption rules set forth in Appendix B of the *NPRM*. However, the Commission must do more than apply them just "to the siting of new broadcast transmission facilities or the alteration or relocation of existing broadcast transmission facilities by television radio stations." Instead, WCA urges that the Commission clarify that the

^{3/} See, e.g., "BellSouth Starts Wireless Cable TV in New Orleans", *USA Today*, at 6B (Nov. 19, 1997); "BellSouth Plans Wireless Cable In New Orleans," *Wall St. J.*, at B12 (Nov. 19, 1997); "PacBell Taking Cable's Best Subs in S. Calif.," *Multichannel News*, at 6 (Nov. 6, 1997); "Thomson's Digital MMDS Set-Top," *Cable World*, at 18 (June 30, 1997).

^{4/} See, e.g., Gibbons, "PCTV's Story: Waiting for Digital," *Multichannel News*, at 54 (Dec. 9, 1996); Barthold, "A Foggy Road Ahead," *Cable World*, at 21 (Jan. 27, 1997); Barthold, "Going Digital," *Cable World*, at 22 (Jan. 27, 1997); Breznick, "BellSouth Eyes Atlanta, New Orleans, Miami for '98 MMDS Launches," *Cable World*, at 12 (Dec. 2, 1996); Estrella, "Is L.A. the MMDS Industry's Last Stand?", *Multichannel News*, at 39 (June 23, 1997).

^{5/} *Amendment of Parts 21 and 74 of the Commission's Rules*, 10 FCC Rcd 9589, 9606 (1995).

proposed rules will also apply to the siting of towers used to transmit MDS and/or ITFS channels, so that wireless cable operators will enjoy the same protection as DTV broadcasters vis-a-vis local zoning and land use ordinances, particularly since it appears that broadcasters will be employing digital compression techniques to provide wireless cable-like offerings.^{6/}

Respectfully submitted,

THE WIRELESS CABLE ASSOCIATION
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^{6/} *Advanced Television Systems and Their Impact Upon The Existing Television Broadcast Service*, MM Docket No. 87-268, FCC 97-116, at ¶ 20 (rel. Apr. 21, 1997).